A-588-837
Reconsideration of Sunset Review
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DATE:

MEMORANDUM TO: David M. Spooner
Assistant Secretary
for Import Administration

FROM: Stephen J. Claeys
Deputy Assistant Secretary
for AD/CVD Operations
Import Administration

SUBJECT: Issues and Decision Memorandum for the Reconsideration of Sunset Review of the Antidumping Duty Order on Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Japan; Final Results

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Summary

We have analyzed the case briefs and rebuttal briefs of the interested parties in the reconsideration of sunset review of the antidumping duty order covering large newspaper printing presses and components thereof, whether assembled or unassembled (LNPP), from Japan. We recommend that you approve the positions described in the Discussion of the Issues section of this memorandum. Below is the list of the issues raised for the final results of this proceeding:

1. Whether the Department's Reconsideration of the Final Results of the 2002 Sunset Review is in Accordance with Law

2. Whether the Department Should Limit Any Findings to TKS and Exclude MHI

3. Whether Goss Qualifies as a Domestic Interested Party for Purposes of this Review

4. Whether TKS' Misconduct is Linked to Goss' Decision to Discontinue Domestic Production and Affected the Results of the 2002 Sunset Review

5. Whether the Department Should Reconsider Goss' Allegation of TKS' Fraud in Other Administrative Reviews

Discussion of the Issues

On December 6, 2006, the domestic interested party, Goss International Corporation (known as Goss Graphics Systems, Inc. (GGS) during the period of review for Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Japan (A-588-837) and Germany (A-428-821): Notice of Final Results of Five-Year Sunset Reviews and Revocation of Antidumping Duty Orders, 67 FR 8522 (February 25, 2002) (2002 Sunset Review)) (Goss), and the foreign producers of LNPP, Mitsubishi Heavy Industries, Ltd. (MHI), and Tokyo Kikai Seisakusho, Ltd. (TKS), submitted case briefs in response to the Department's preliminary results (Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Japan: Preliminary Results of Reconsideration of Sunset Review , 71 FR 64927 (November 6, 2006), and accompanying Issues and Decision Memorandum (Preliminary Results)). Goss and TKS submitted rebuttal comments on December 11, 2006. We held a public hearing on December 18, 2006. Below we address the comments of the interested parties.

Comment 1: Whether the Department's Reconsideration of the Final Results of the 2002 Sunset Review is in Accordance with Law

TKS argues that the Department has no authority to conduct a sunset review of an order that has been revoked. According to TKS, under section 752(c) of the Tariff Act of 1930, as amended (the Act), an antidumping duty order must be in effect if the Department is to determine the potential effect of revocation of the order. However, in this case, TKS explains that, in order to reconsider the sunset review, the Department went back in time to "create" the antidumping duty order, which was revoked more than four years before the current proceeding was initiated. In addition to the lack of authority under U.S. law, TKS maintains that the proposed action is also contrary to the World Trade Organization (WTO) Antidumping Agreement because the Agreement does not authorize investigating authorities to reinstate an antidumping duty order after it has been revoked.

In addition, TKS argues that if, as stated in the changed circumstances review (CCR)[1] as well as the preliminary results of this reconsideration of the sunset review, the Department's purpose is to protect the integrity of its proceedings, that purpose has been served by the final results of the changed circumstances review. TKS claims that if the Department believes that it must also reconsider the sunset review in order to protect the integrity of its proceedings, the Department must explain how TKS' misconduct made the results of the original sunset review unreliable. TKS continues that, in the absence of any evidence of a causal connection between TKS' misconduct and the results of the original sunset review, the only purpose served by reconsidering the sunset review is to punish TKS. Regardless of the allegations against TKS, TKS states that the Department is not a law enforcement agency and has no authority to penalize TKS for its misconduct.

[1] Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Japan: Final Results of Changed Circumstances Review, 71 FR 11590 (March 8, 2006), and accompanying Issues and Decision Memorandum.

Finally, TKS asserts that there is no need to reinstate the antidumping duty order to remedy any injury allegedly incurred by Goss because TKS' misconduct had no effect on Goss. TKS notes that the domestic interested party during that review was GGS and that Goss International Corp. did not exist at the time of the original sunset review. Instead, TKS asserts that Goss purchased GGS' foreign plants[2] and thus Goss is still primarily a foreign producer of LNPP, so that a reinstatement of the antidumping duty order would not remedy any injury to the domestic industry but rather would only inhibit the ability of TKS to compete with other foreign producers, including Goss.

MHI contends that the Department does not have the authority to reimpose the revoked LNPP order through this proceeding because the Act authorizes the imposition of an antidumping duty order only following a formal investigation that results in an affirmative less-than-fair-value (LTFV) finding from the Department and an affirmative injury finding from the U.S. International Trade Commission (ITC). However, according to MHI, even if the ITC were to find injury as a result of this finding, the Department still would not have the authority to impose an order because the sunset review standard is different from, and based on a different time period than, the original injury finding in an investigation. Moreover, MHI insists that the Department cannot rely on the fraud issue in one proceeding (i.e., TKS' misconduct in the 1997-1998 administrative review) to reopen another proceeding unaffected by the fraud (i.e., the 2002 Sunset Review).

Additionally, MHI agrees with TKS that the Department's actions are contrary to law because they conflict with the remedial purpose of the antidumping law. According to MHI, because it does not consider Goss to qualify as a domestic interested party (see Comment 3 below), with no domestic industry in existence, there can be no remedial purpose to taking action. MHI argues that, if the Department's objective was to correct the effect of TKS' fraud on Department proceedings, an effect which MHI believes has not been demonstrated, and if correcting that effect requires reconsideration of the sunset review against Japan, then similarly, the sunset review against LNPP from Germany, an antidumping duty order that was issued and revoked contemporaneously with the LNPP from Japan order, must also be reconsidered. MHI believes that the absence of any action on the German sunset review is evidence that the Department's objective in this review is to punish TKS.

Goss responds that the Department correctly rejected MHI's and TKS' arguments in the preliminary results and it should do so again for the final results. Goss notes that many federal courts have held that federal agencies possess the inherent authority to reconsider their own decisions, particularly to protect the integrity of those decisions when evidence of fraud is uncovered. Goss cites Elkem Metals Co. v. United States, 193 F. Supp. 2d 1314 (CIT 2002) (Elkem Metals) as an example.

[2] Goss International Corp. purchased the assets of GGS in a bankruptcy sale in February 2002, after GGS closed its U.S. production facilities, as noted at footnote 1 in Goss' August 1, 2006, submission.

Goss asserts that TKS is incorrect that the Department has, in effect, recreated the antidumping duty order as a means to pursue this proceeding. Rather, Goss continues, the Department is reconsidering its decision in the sunset review based on the facts as they were at the time when the original decision was made, and in a manner which affords all parties the opportunity to participate.

Goss refutes the assertion that this review is punitive. Instead, Goss contends that this review only attempts to make whole the parties who were injured by TKS' fraud. According to Goss, corrections that stem from this reconsideration would only serve to further the remedial purpose of the antidumping laws that were thwarted by TKS' conduct. That such actions may result in the removal of benefits that TKS and MHI received as a result of TKS' actions does not make these corrections punitive.

While Goss does not dispute MHI's contention that the Department cannot put an antidumping duty order in place without a new, contemporaneous injury finding, Goss also states that the Department's reconsideration of the sunset review is not precluded. Goss notes that the Department is not attempting to decide issues that must be decided by the ITC.

DOC Position:

As we stated in the Preliminary Results at Issue 1, the Department is reconsidering the original sunset review in order to protect the integrity of our proceedings. Because TKS' misconduct in the 1997-1998 administrative review was so egregious, it renders the results of the subsequent sunset review unreliable. Accordingly, we have found it reasonable to reconsider the sunset review to examine the likelihood of continued dumping, and to allow all parties an opportunity to participate.

Contrary to TKS' and MHI's contentions, the Department has inherent authority to conduct this proceeding and reconsider its prior sunset determination. As uniformly held by the courts, the power to reconsider is inherent in the power to decide. See, e.g., Tokyo Kikai Seisakusho, Ltd. et al. v. United States, 529 F.3d 1352, 1360 (Fed. Cir. 2008) ("The prohibition against doing something not authorized by statute is altogether different from the power to reconsider something that is authorized by statute."); Macktal v. Chao, 286 F.3d 822, 825 (5th Cir. 2002) ("[I]t is generally accepted that in the absence of a specific statutory limitation, an administrative agency has the inherent authority to reconsider its decisions."); Trujillo v. Gen. Elec. Co., 621 F.2d 1084, 1086 (10th Cir. 1980) ("Administrative agencies have an inherent authority to reconsider their own decisions, since the power to decide in the first instance carries with it the power to reconsider."); Elkem Metals Co. v. United States, 193 F. Supp. 1314, 1320 (CIT 2003) ("It is indeed the general rule that federal agencies have the power to reconsider their final determinations."); Bookman v. United States, 453 F.2d 1263, 1265 (Ct. Cl. 1972) ("[I]t is the general rule that 'every tribunal, judicial or administrative, has some power to correct its own errors or otherwise appropriately to modify its judgment'."). As the U.S. Court of Appeals for the Federal Circuit recently held with respect to the Department's decision in the CCR, "[a]n

agency's power to reconsider is even more fundamental when, as here, it is exercised to protect the integrity of its own proceedings from fraud." See Tokyo Kikai, 529 F.3d at 1361.

Here, the Department's authority to reconsider the prior sunset review is inherent in its statutory authority to make that determination in the first instance. As mandated by the statute, the Department conducted a sunset review of LNPP from Japan in 2002. See 2002 Sunset Review. Because the Department conducted the sunset review pursuant to its authority under section 751(c) of the Act, it possesses inherent authority to reconsider that sunset review.

With respect to MHI's argument concerning the absence of a similar reconsideration of sunset review for the LNPP from Germany antidumping duty order, we note that the LNPP from Germany case was a separate proceeding from the LNPP from Japan case. TKS's egregious behavior in providing false information did not take place in the LNPP from Germany proceeding. Indeed, TKS was not even a party to that proceeding. Therefore, the Department has no basis to reconsider the sunset review in that proceeding.

With respect to TKS' argument that reinstatement of the order would not remedy any injury to the domestic industry because Goss is primarily a foreign producer of LNPP, we stress that the Department's reconsideration of sunset review is based on the facts as they were at the time when the original decision was made. As we discuss in detail under Comment 3 below, based on the facts as they existed during the original sunset review, Goss qualifies as a domestic interested party for purposes of this reconsideration of sunset review.

Additionally, we disagree with both TKS' and MHI's contentions that we do not have the authority to conduct a sunset review of this order because it has been revoked. As discussed above, the Department has inherent authority to conduct this proceeding and reconsider its prior sunset determination, as confirmed by the courts. The revocation of the antidumping duty order on LNPP from Japan came as a direct result of the final results in the 2002 Sunset Review, and it is, in fact, those final results that we are reconsidering. Because TKS' misconduct in the 1997-1998 administrative review was so egregious, it renders the results of the subsequent sunset review unreliable; thus, we have deemed it appropriate to reconsider the final results of the 2002 Sunset Review. Subsequent to these results of the reconsideration of sunset review, the ITC will have the opportunity to consider the injury argument in the context of its separate sunset review procedures. Further, U.S. law, as implemented through the Uruguay Round Agreements Act, is consistent with the United States' obligation pursuant to the WTO Agreement.

Finally, reconsideration of the sunset review is not an adverse assumption against any party. The Department's objective is not to punish TKS or any other party, but rather to defend the integrity of its proceedings. The provision of false information that TKS committed in the 1997-1998 administrative review was so egregious that the Department was compelled to conduct the CCR and, subsequently, conduct this reconsideration of sunset review to defend the integrity of its past determinations and to ensure the integrity of its future proceedings. Moreover, all parties have had an opportunity to participate fairly in this proceeding.

Comment 2: Whether the Department Should Limit Any Findings to TKS and Exclude MHI

MHI contests the Department's finding in the Preliminary Results that MHI must be included in this proceeding because the Department does not have the discretion to exclude a company from a country-wide matter such as the disposition of an antidumping duty order. According to MHI, because the Department has already exercised its discretion without statutory authority to conduct this review for the stated purpose of protecting the integrity of the Department's proceedings (see MHI argument in Comment 1 above), then it can exclude MHI from this proceeding as well. MHI contends that the Department's action to protect the integrity of its proceedings is limited to those actions which are necessary to protect that integrity. MHI continues that, as MHI fully complied with U.S. law in all LNPP proceedings, such action against MHI is not necessary and thus the Department should confine its discretionary actions in this regard to TKS without including MHI.

Goss contends that, as the Department stated in the Preliminary Results, antidumping duty orders are imposed on a country-wide basis and the Department has no legal authority to exclude MHI from its findings. Therefore, the Department should continue to find that MHI must be included in the scope of its report to the ITC. Goss asserts further that the lack of improper behavior on MHI's part is irrelevant to the Department's analysis, emphasizing that MHI reaped an undue windfall from TKS' behavior and the Department's termination of the antidumping duty order in the original sunset review.

DOC Position:

As stated in the Preliminary Results at Issue 6, antidumping duty orders are issued on a country-wide basis, and sunset reviews are conducted on a country-wide basis. There is no statutory provision for conducting a sunset review solely for one company in a country subject to an order, nor does the Department have the discretion to exclude a company from the continuation of an order following the completion of a sunset review, which is conducted on a country-wide basis. See Statement of Administrative Action (SAA), H.R. Doc No. 103-316, Vol. 1, at 879. MHI offers no new arguments for its position. While we acknowledge that MHI is not accused of any misconduct in any past segment of the proceeding related to the currently revoked LNPP antidumping duty order, we emphasize that TKS' egregious behavior in a past segment of that proceeding rendered the results of the 2002 Sunset Review unreliable and thus compelled the Department to reconsider the sunset review. Accordingly, we maintain our position articulated in the Preliminary Results that the Department has no legal authority to limit this reconsideration of the sunset review to TKS.

Comment 3: Whether Goss Qualifies as a Domestic Interested Party for Purposes of this Review

MHI argues that it has provided the Department with detailed evidence that Goss did not qualify as a domestic interested party for the purposes of this sunset review. MHI maintains that, despite

the statements to the contrary in the Department's Preliminary Results Issues and Decision Memorandum, Goss conceded that it no longer qualified as a domestic producer in repeated, certified filings submitted to the Department prior to its July 31, 2006, questionnaire response in this reconsideration of sunset review. Moreover, according to MHI, the record demonstrated that, when Goss filed its substantive response with the Department in the 2002 Sunset Review, it was no longer a domestic producer because it had terminated the employment of the personnel necessary for LNPP production.

More specifically, MHI contends that Goss did not meet the Department's apparent standard that a domestic producer must have an "important or substantial manufacturing operation." According to MHI, Goss' assertion that it had the "capacity" to produce LNPP does not rise to the level of actually performing an "important or substantial manufacturing operation" or "actual production." MHI also notes that Goss had fired the majority of its labor force necessary for the manufacture of LNPP, contradicting the Department's reliance in the Preliminary Results on Goss' assertion that it "had sufficient labor resources available so that it was capable of production through the end of the period in question." MHI contends that, by the time Goss filed its August 31, 2001, substantive response for the 2002 Sunset Review, the company had already lost the labor component necessary for producing LNPP. MHI maintains that these workers were never rehired and Goss' contention in its July 31, 2006, response that it could have rehired those workers is inaccurate because it would have been inconsistent with Goss' plan as presented to the bankruptcy court and its creditors. MHI continues that the Department's assessment in the Preliminary Results that Goss maintained a "stake in the proceeding" is inconsistent with Goss' actions to terminate LNPP production in the United States.

In addition, MHI contends that Goss' July 31, 2006, submission is in direct conflict with its prior, certified statements that it had ceased production of LNPP in the United States. MHI contends that the Department cannot allow a party to repeatedly rely on certified characterizations of its status on the record and then change that characterization when the argument becomes inconvenient.

For these reasons, MHI again urges the Department to recognize that Goss did not qualify as a domestic interested party and terminate this proceeding without further action.

TKS contends that, in the Preliminary Results, the Department disregarded the evidence on the record that Goss (i.e., GGS, at the time) never intended to resume production in the United States. Although Goss was a domestic LNPP producer during most of the 2002 Sunset Review period and it responded to the notice of initiation of that review, TKS asserts that those facts are insufficient to entitle Goss to participate in this proceeding as a domestic interested party. TKS maintains that when Goss closed its U.S. production facility on August 31, 2001, it ceased to be a domestic producer. On that same date, when Goss submitted its substantive response for the 2002 Sunset Review, TKS adds that Goss also publicly announced that it had closed its sole U.S. production facility, and that all future orders for Goss LNPP would be filled by its foreign plants. Goss subsequently withdrew its participation from the 2002 Sunset Review. TKS maintains that

these facts have not changed in any way, and thus there is no basis for the reconsideration of sunset review to result in an outcome different from that in the 2002 Sunset Review.

TKS notes as well that the Department's Preliminary Results do not explain how a response from a company that has closed its U.S. production facility could be deemed adequate to permit the company to participate in a sunset review as a domestic producer. TKS agrees with MHI that, once Goss closed its U.S. manufacturing plant and shifted production of its LNPP to its overseas plants, Goss no longer had a stake as a domestic producer in the outcome of the sunset review, nor does it have any such stake today.

Goss supports the Department's Preliminary Results finding that Goss continued as a domestic interested party with a stake in the industry and an interest in maintaining the antidumping duty order through the 2002 Sunset Review period and the period of the conduct of that review. Goss' rebuttal brief reviews the information contained in Goss' July 31, 2006, submission that Goss maintained the capital equipment and facilities for producing LNPP through November 30, 2001, and that Goss maintained a workforce capable of producing LNPP as well.

Goss contends that TKS' and MHI's arguments rest on a faulty assumption that a period of relative production inactivity or financial hardship is sufficient to terminate a domestic producer's interest in an antidumping duty order. Goss argues that such an interpretation would thwart the purpose of antidumping duty orders, which are put into place to protect domestic producers from unfair competition and the financial hardship resulting from it. According to Goss, a temporary suspension of production, combined with financial hardship should not create a loophole for terminating an order when a domestic producer has consistently expressed an interest in the order, and provided an adequate response in the context of the Department's sunset review.

DOC Position:

As we have stated above and in the Preliminary Results, this reconsideration of sunset review is based on the facts as they were at the time of the 2002 Sunset Review when the original decision to revoke the LNPP antidumping duty order was made. We explained in the Preliminary Results at Issue 2 that:

> During the original sunset review, the Department received a substantive response from Goss on August 31, 2001. Goss also filed a substantive response on May 15, 2006, in the context of this reconsideration. Although the terms "manufacturer" and "producer" are not defined in the statute or the regulations, there is no dispute that Goss was a producer of a domestic like product through August 31, 2001, when, in addition to submitting its substantive response, Goss announced its decision to close its U.S. manufacturing facility . . . .
>
> Goss met the requirements of section 751(c) of the Act and 19 CFR 351.218(e)(1)(i) when it submitted its complete substantive response on August 31, 2001. Certainly no objection to Goss' status was raised by TKS or MHI on that date, because neither TKS nor MHI chose to file any response at all.

Our examination of Goss' domestic interested party status for purposes of this reconsideration of sunset review is based only on the situation as it existed at the time of the original sunset review. As we also stated in the Preliminary Results:

> Goss stated that, following its August 31, 2001, decision to close its U.S. plant, it retained the capacity to produce LNPP in the United States, as its plant and equipment assets were still in place, as were some production-related workers who continued to work on LNPP components that were outside the scope of the order. While we note Goss' statements regarding its intent at that time to cease U.S. LNPP production, the record does not demonstrate that Goss' status as a domestic producer terminated during the time period relevant to the expedited sunset review. Therefore, during the time-period relevant to an expedited sunset review, Goss maintained its status as a domestic producer with a stake in the outcome in the sunset proceeding.

Neither MHI nor TKS has presented any new arguments to challenge the statutory and regulatory basis for our finding expressed in the Preliminary Results. Therefore, we continue to find that Goss qualifies as a domestic interested party for purposes of this reconsideration of sunset review.

Comment 4: Whether TKS' Misconduct is Linked to Goss' Decision to Discontinue Domestic Production and Affected the Results of the 2002 Sunset Review

TKS argues that the main issue to be addressed in this proceeding is whether there is any causal connection between TKS' submission of false information in the 1997-1998 administrative review and the results of the 2002 Sunset Review. TKS contends that this issue is the only reason ever articulated by the Department to justify its decision to reconsider the sunset review and the revocation of the antidumping duty order on LNPP from Japan. According to TKS, the Department has treated this reconsideration of sunset review as a normal sunset review, focusing exclusively on the issue of the likelihood of the continuation or recurrence of dumping, and has asserted that the reason the order was revoked is not relevant to its decision. Rather, the Department stated that the alleged effects of TKS' actions on Goss during the sunset review POR are more properly considered by the ITC. TKS, on the other hand, believes that the question of whether Goss' plant closing and withdrawal from the original sunset review were direct results of TKS' misconduct is not an issue for the ITC to decide, but rather for the Department, because it is the Department, not the ITC, that revoked the antidumping duty order after Goss withdrew from the 2002 Sunset Review.

Moreover, TKS contends that the Department's finding in the Preliminary Results that whether or not Goss' plant closing and withdrawal from the 2002 Sunset Review were direct results of TKS' actions is "not relevant" to its decision in this proceeding is contradicted by the Department's determination in the CCR that TKS' misconduct in the 1997-1998 administrative review was so egregious that it renders the results of the 2002 Sunset Review unreliable. TKS maintains that its actions could only have affected the results of the 2002 Sunset Review if they caused Goss to close its U.S. plant and withdraw from the review, but TKS complains that the Department has avoided making any decision on this issue.

Similarly, MHI argues that the analysis in the Preliminary Results of the Department's authority to conduct this sunset review reconsideration fails to address the consequences of the fact that the Department could not and did not find any link between the fraud committed by TKS and Goss' decision to cease domestic production. According to MHI, Goss' decision to withdraw from the sunset review is the result of its cessation of production in the United States, not because of any fraud by TKS. Thus, MHI argues that there is no basis for reconsidering the sunset review results.

MHI and TKS state that, if the Department evaluates the reasons for Goss' withdrawal from the 2002 Sunset Review, it must conclude that there is no connection between those results and TKS' actions in the 1997-1998 administrative review. The two companies assert that there is sufficient evidence on the record to demonstrate that the closure of Goss' domestic production facility was in no way caused by TKS' actions in that review. Both MHI and TKS refer to detailed information each has placed on the record of this review that they assert demonstrates that Goss' own actions were responsible for the plant closing and bankruptcy of Goss' predecessor, GGS.

Goss responds that TKS' fraud distorted the marketplace in which both TKS and Goss operated, and, therefore, had a direct impact on Goss' ability to continue as a domestic producer and to participate in the 2002 Sunset Review. Goss disputes TKS' and MHI's assertions that Goss' withdrawal from the U.S. market and the 2002 Sunset Review derived from Goss' "self-inflicted" injuries. Goss notes that it cited unfair dumping by foreign manufacturers in its press releases announcing its U.S. plant closing in 2001 as the primary reason for that closing. Goss also points to testimony by its expert witness in Goss Int'l Corp. v. Tokyo Kikai Seisakusho, Ltd., 321 F. Supp. 2d 1039 (N.D. Iowa 2004), that, in the absence of concealed TKS dumping, Goss would have won additional contracts during the original sunset review period and thus been able to remain in business. Referring to information Goss placed on the record, Goss asserts that TKS was its primary competitor in the United States, so that TKS' actions in the U.S. market had their greatest impact on Goss. These factors are among those which Goss contends demonstrate a link between TKS' behavior and Goss' plant closure that, in turn, led to Goss' withdrawal from the 2002 Sunset Review.

Although Goss considers as reasonable the Department's position to defer to the ITC for examining the effect of TKS' fraud on Goss' participation in the 2002 Sunset Review, Goss adds that the record of this review supports a Department finding that Goss would have continued its participation in the 2002 Sunset Review if not for TKS' actions, and that the Department is competent to make that determination. According to Goss, as the Department has asserted its inherent authority to reconsider proceedings that have been affected by fraud, logically this authority must also include the authority to determine whether its proceedings have, in fact, been affected by fraud. Goss expresses the concern that this reconsideration may not be complete if the Department cannot address the impact of TKS' fraud on the 2002 Sunset Review because in its opinion the ITC is precluded from considering the issue without a Department finding to that effect.

Nevertheless, Goss continues that, even if the Department does not decide on the causal link issue in the final results, Goss maintains that the Department still has the authority to reconsider the sunset review. Goss notes that it provided a complete and adequate response to the Department's 2001 notice of sunset review initiation,[3] and, as the Department found in the Preliminary Results, Goss was a domestic interested party for the relevant period in question. Consequently, Goss contends that its withdrawal from the 2002 Sunset Review, driven by TKS' actions and Goss' bankruptcy filing, should not have resulted in the termination of the order. Goss refers to the ability of federal agencies to reconsider determinations in order to correct errors (see Borlem S.A. Empreedimentos Industriais v. United States, 913 F. 2d 933 (Fed.Cir.1990) (Borlem)). In that light, the Department has the authority to reconsider its decision to terminate the original sunset review and the antidumping duty order despite the adequate response of a domestic interested party (i.e., Goss).

DOC Position:

We disagree with TKS and MHI that, by reconsidering the 2002 Sunset Review, the Department must demonstrate a causal link between TKS' fraud and Goss' withdrawal from the 2002 Sunset Review. As we stated in the CCR and in Comment 1 above, TKS' misconduct in the 1997-1998 administrative review was so egregious that it tainted the integrity of the proceeding, and potentially influenced the parties' decisions whether or not to participate in the sunset review. Accordingly, we cannot rule out the possibility of a causal link between TKS' fraud and Goss' withdrawal from the sunset review and, therefore, find that the circumstances of this case warrant reconsideration of the sunset review so that the ITC may further analyze the issue of material injury.

A sunset review consists of two parts: a) whether dumping would continue if the antidumping duty order were revoked, and b) whether the domestic industry would suffer injury if the order were revoked. The Department's role in a sunset review is to consider the former, and the ITC's the latter. See section 751(d)(2) of the Act. The Department has the authority and the expertise to evaluate whether dumping would continue or resume if an order were revoked. As stated in Comment 1 above, an agency has the authority to reconsider, and thus revise, its determinations to correct errors, and, as established by earlier court rulings, address issues of fraud. Under section 752(a) of the Act, the ITC, not the Department, has the authority to investigate the effects of dumped imports on domestic industries. Moreover, the ITC has developed the expertise and analytical tools to properly assess the impact of unfair foreign trade on U.S. industries.

As we discussed in the Preliminary Results, we found it likely that, given the situation existing at the time of the 2002 Sunset Review, dumping would resume if the order were revoked, and at the margins stated in Preliminary Results. That finding has not been challenged by any party for the

[3] Notice of Initiation of Five-Year ("Sunset") Reviews, 66 FR 39731 (August 1, 2001).

final results. Accordingly, we will report our findings in this reconsideration of sunset review to the ITC, and defer to the ITC with respect to its authority to analyze the likelihood of continuation or recurrence of material injury on the domestic LNPP industry.

Comment 5: Goss' Allegation of TKS Fraud in Other Administrative Reviews

Goss argues that the Department was incorrect in stating in the Preliminary Results that Goss' allegations of TKS fraud in the 1998-1999 and 1999-2000 administrative reviews are not relevant to the current proceeding. Goss contends that because the Department focuses on the margins in each administrative review during a sunset review period, the possibility that the margins are incorrect is definitely relevant to the Department's sunset review results. Goss claims that, because of the alleged TKS fraud in these administrative reviews, the Department must consider TKS' zero margins in those reviews as unreliable and take that fact into account in the final results of the sunset review.

With respect to its fraud allegations, Goss asserts that it provided several new, key documents in this review that, together with the information submitted in the CCR, demonstrate that TKS intentionally withheld information from the Department regarding its sales process in an attempt to influence the Department's determination as to the date of sale for the sales made during the 1998-1999 and 1999-2000 administrative reviews. Furthermore, Goss believes that, in both this review and the CCR, the Department has misunderstood Goss' argument concerning these allegations of fraud. Goss states that it is not arguing that, had the information been presented accurately and completely during the reviews, the Department's date of sale determination would have been different for those reviews, although it may have been. Rather, Goss contends that TKS withheld and misrepresented data that was relevant to the date of sale issue and was requested by the Department. Therefore, according to Goss, regardless of whether the outcome of the reviews would have been different, TKS failed to act to the best of its ability in those reviews – behavior that the Department has found to merit adverse facts available (AFA) in a past review. At a minimum, Goss asserts that the Department should recognize that fraudulent behavior occurred in 1998-1999 and 1999-2000 administrative reviews and that any such behavior during the sunset review period is relevant to the instant proceeding.

TKS responds that Goss has failed to demonstrate why the Department should reconsider its rejection of these allegations in the final results of the CCR and the Preliminary Results of this review. First, TKS contends that Goss has not demonstrated what impact such reconsideration of the allegations would have on this proceeding. TKS notes that the Department's analysis in a sunset review involves a determination of the dumping margin that is likely to prevail if the order is revoked. Consistent with the statute and the Department's practice, the Department selected TKS' LTFV margin of 51.97 percent to report to the ITC, and rejected Goss' arguments for applying the 59.67 percent AFA margin applied to TKS for the 1997-1998 review period in the final results of the CCR. TKS asserts that Goss has provided no additional reasoning for the Department to change the Preliminary Results finding.

Second, TKS states that Goss has abandoned many of its previous allegations of fraud in the 1998-1999 and 1999-2000 reviews and concentrated on arguments that TKS misrepresented the dates of sale for two of the three sales covered by those reviews by intentionally withholding relevant information from the Department. According to TKS' review of the information provided concerning these sales, the Department correctly analyzed Goss' allegations in the CCR and that there was, and continues to be, no basis to determine that any misrepresentation by TKS was committed with respect to these sales. TKS adds that Goss has failed to provide any new "clear and compelling" information that might warrant the Department's further reconsideration of these reviews.

DOC Position:

We continue to find, as stated in the Preliminary Results at Issue 5, that the issue of Goss' allegations of fraud in the other administrative reviews is not relevant to the Department's sunset review reconsideration finding. We have already determined that, had the LNPP from Japan antidumping duty order not been revoked, revocation would have likely led to continuation or recurrence of dumping at the rates prevailing from the final determination of the LTFV investigation, as amended on remand (see the Preliminary Results at Issues 3 and 4). No party has contested those preliminary findings. Even with the application of AFA to TKS with respect to the sale covered by the 1997-1998 review, we determined in the Preliminary Results that the LTFV rates, as amended by remand, are the appropriate rates to report to the ITC for purposes of the reconsideration of sunset review.

Moreover, as we stated in the Preliminary Results at Issue 5, the information proffered by Goss in this review does not demonstrate clear and convincing evidence of intentional misconduct by TKS in the subsequent reviews to the extent found in the 1997-1998 review.[4] The Department reexamined the results of the 1997-1998 review with respect to TKS in the CCR because of the clear and convincing evidence of TKS' misconduct, and the egregious nature of that misconduct. As we have stated repeatedly, the facts of that review represent an exceptional case. It is not the Department's practice to reconsider its decisions in administrative proceedings based on less than clear and compelling evidence of misconduct.

Final Results of Review

As a result of this review, including the analysis set forth in our preliminary and final results, we determine that, had the antidumping duty order not been revoked in the 2002 Sunset Review, revocation of the antidumping duty order on LNPP from Japan would have likely led to continuation or recurrence of dumping at the following weighted-average percentage margins:

[4] In fact, the information is not significantly different from that submitted in the CCR and reviewed by the Department during that review, as discussed at Comment 4 of the CCR Issues and Decision Memorandum. Further, the Court of International Trade has upheld the Department's position on that issue in Tokyo Kikai Seisakusho, Ltd. v. United States, 473 F. Supp. 2d 1349, 1364 (Ct. Int'l Trade 2007).

Manufacturers/Exporters/Producers	Weighted-Average Margin (Percent)
Mitsubishi Heavy Industries, Ltd.	59.67
Tokyo Kikai Seisakusho, Ltd.	51.97
All Others	55.05

Recommendation

Based on our analysis of the comments received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the final results of review in the Federal Register.

AGREE _____ DISAGREE_____

_____
David M. Spooner
Assistant Secretary
for Import Administration

_____
Date